

IX. PROCEDURAL SAFEGUARDS

GENERAL RESPONSIBILITY OF LEAD AGENCY FOR PROCEDURAL SAFEGUARDS (34 CFR 303.400)

DESE, lead agency for Part C, is responsible for:

- (a) Establishing or adopting procedural safeguards that meet the requirements of this subpart; and
- (b) Ensuring effective implementation of the safeguards by each public agency in the State involved in the provision of early intervention services.

DEFINITIONS OF CONSENT, NATIVE LANGUAGE, AND PERSONALLY IDENTIFIABLE INFORMATION (34 CFR 303.401)

(a) Consent means:

- (1) parent(s) has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;
- (2) parent(s) understands and agrees in writing to the activity for which consent is sought, and the consent describes that activity and lists records (if any) that will be released and to whom;
- (3) parent(s) understands that consent is voluntary on the part of the parent, and may be revoked at any time.

(b) Native language means the language or mode of communication normally used by the parent of a child eligible under this part.

(c) Personally identifiable means information that includes:

- (1) the name of the child, the child's parent or other family member;
- (2) the address of the child;
- (3) a personal identifier, such as the child's or parent's social security number; or,
- (4) a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

OPPORTUNITY TO EXAMINE RECORDS (34 CFR 303.402)

In accordance with the confidentiality procedures in the regulations under Part B of the Act (34 CFR 300.560 – 300.576) the parents of eligible children must be afforded the opportunity to examine/inspect/review records relating to evaluations and assessments, eligibility determinations, development and implementation of IFSPs, individual complaints dealing with the child, and any other area involving records about the child and the child's family. Agencies maintaining such records must allow parents access without unnecessary delay. Parents also have the right to request an explanation of the records or to request to amend the records if the parents believe information is inaccurate or misleading.

PRIOR NOTICE; NATIVE LANGUAGE (34 CFR 303.403)

Written prior notice shall be given to parents of a child eligible under this part a reasonable time before the public agency or service provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of the child or the provision of appropriate early intervention services to the child and the child's family.

CONTENT OF THE NOTICE

This notice must be in sufficient detail to inform the parents about:

1. The action being proposed or refused;
2. The reasons for taking the action; and,
3. All procedural safeguards that are available under Secs. 303.401 – 303.460 of this part and
4. The State complaint procedures under Secs 303.510 – 303.512, including a description of how to file a complaint and the timelines under those procedures.

The notice must be written in language understandable to the general public and be provided in the parent's native language unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the public agency, or designated service provider, shall take steps to ensure that:

1. the notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
2. the parent understands the notice; and,
3. there is written evidence that the requirements of this paragraph have been met.

If a parent is deaf or blind, or has no written language, the mode of communication must be that which is normally used by the parent (such as sign language, braille, or oral communication).

PARENT CONSENT (34 CFR 303.404)

The State of Missouri ensures that written parental consent will be obtained before;

1. Conducting the initial evaluation and assessment of a child under sec. 303.322; and
2. Initiating the provision of early intervention services.

If the parent does not give consent (or withdraws consent after first providing it), the service coordinator shall make reasonable efforts to ensure that the parent:

1. Is fully aware of the nature of the evaluation and assessment of the services that would be available; and
2. Understands that the child will not be able to receive the evaluation and assessment or services unless consent is given.

PARENT RIGHT TO DECLINE SERVICE (34 CFR 303.405)

Parents of eligible children may determine if they, their child, or other family member will accept or decline any early intervention service under this part in accordance with state law, and may decline such a service after first accepting it, without jeopardizing other early intervention services under this part.

SURROGATE PARENTS (EDUCATIONAL SURROGATE) (34 CFR 303.406)

The Missouri Department of Elementary and Secondary Education has established the following for the appointment of educational surrogates:

Identifying the Need for Appointment

Any person may advise the agency responsible for providing early intervention services to a child with a disability that a child with a disability within its jurisdiction may be in need of a person to act as an educational surrogate. Notice can be given to the System Point of Entry (SPOE) or directly to the Division of Special Education, Missouri Department of Elementary and Secondary Education.

Process of Appointment

When the SPOE is informed of a child with disabilities living within its jurisdiction, it shall, within thirty (30) days, determine whether an educational surrogate should be appointed. A request for the appointment of a surrogate shall be made within ten (10) days to the Division of Special Education. The Division, on behalf of the State Board of Education, shall, within thirty (30) days, appoint a person to act as an educational surrogate. The Division shall maintain a registry of trained educational surrogates from which they will select individuals for appointment. If an educational surrogate dies, resigns, or is removed, within 15 days thereof, a replacement will be appointed.

Criteria for Appointment

The State Board of Education shall appoint a person to act as a surrogate for the parent or guardian of a child with a disability as defined in Section 162.675, RSMo, when:

- A) the child has no identified parent, guardian, or person acting as parent;

- B) the child has parents who, after reasonable efforts, cannot be located by a public agency; or,
- C) the child is a ward of the state and is living in a facility or group home (and not with a person acting as a parent).

Definitions

The Department will use the following definitions when determining child eligibility to receive a surrogate appointment:

- A. the term "parent" means a parent, a guardian, a person acting as parent of a student, or an educational surrogate who has been appointed. The term does not include the State if the student is a ward of the State; and,
- B. the term "person acting as a parent of a child" refers to relatives of the child or private individuals allowed to act as parents of a child by the child's natural parents or guardians. For example, a grandparent, neighbor, governess, friend, or private individual caring for the child with the explicit or implicit approval of the child's natural parent or guardian would qualify as "a person acting as a parent of a child." If a child is represented by such a person, no educational surrogate is needed.

Qualifications for Appointment

Any person who is appointed to act as an educational surrogate shall:

- A. be at least 18 years of age;
- B. not be an employee of any State agency or a person or an employee of a person providing early intervention services to the child or to any family member of the child (a person otherwise qualified to be an educational surrogate is not an employee of an agency simply because he or she is reimbursed to serve as an educational surrogate);
- C. be free from any interest that may conflict with the interests of the child represented; and,
- D. have knowledge and skills that ensure adequate representation of the child.

Educational Surrogate Training

All educational surrogates shall participate in a training session in which they will become familiar with the Missouri Educational Surrogate Program, acquire a basic understanding of the early intervention services provided through First Steps in Missouri, and develop the knowledge and skill necessary to adequately represent a child with disabilities. DESE shall provide the educational surrogate training.

System Point of Entry Responsibilities

Specifically, each SPOE shall:

- a) designate a staff member who will be responsible for overseeing the educational surrogate program in their agency. Unless notified otherwise, DESE will assume that the educational surrogate contact person is the same as the SPOE contact person;
- b) complete and return to DESE a "Determination of Need for Surrogate Appointment" form for each child believed to be eligible for receiving a surrogate appointment;
- c) assist DESE in recruiting educational surrogate volunteers and submit their names and addresses to DESE;
- d) be available to assist DESE with local educational surrogate training; and,
- e) complete and return to DESE an "Educational Surrogate Evaluation" form for each surrogate serving in the SPOE catchment area.

Duties of the Educational Surrogate

An individual appointed to act as educational surrogate shall:

- a) complete and return to DESE Educational Surrogate Application and Verification of Eligibility form;

- b) attend an educational surrogate training session;
- c) represent their assigned child in all decisions relating to the child's early intervention including matters related to the identification, evaluation, and placement of the child, and,
- d) notify the System Point of Entry or DESE if any conflicts develop, or if they will no longer be able to fulfill their educational surrogate role.

Immunity from Liability

The person appointed to act as an educational surrogate shall be immune from liability for any civil damage arising from any act or omission in representing the child in any decision related to the child's early intervention. This immunity shall not apply to intentional conduct, wanton and willful conduct, or gross negligence.

Reimbursement

The person appointed to act as an educational surrogate shall be reimbursed by the State Board of Education for all reasonable and necessary expenses incurred as a result of his or her representation of a child with a disability. Determination of "reasonable and necessary" expenses shall be made at the discretion of the Department and pursuant to State Office of Administration guidelines. Such expenses do not include attorney fees or child care/babysitting expenses.

Evaluation

DESE will send to each System Point of Entry an evaluation form to complete for each educational surrogate in which they will recommend the continuation or termination of the surrogate appointment. The System Point of Entry shall provide brief written discussions supporting a recommendation of termination and attach any existing documentation. Upon receipt of a recommendation of termination, the Division will investigate and reach a decision on whether to terminate.

Termination

The educational surrogate appointment shall be terminated at the request of the educational surrogate or in the event of any of the following situations:

- A. the conclusions of the initial evaluation and assessment indicate that the child does not qualify for receiving early intervention services;
- B. the child's parent or guardian reappears to represent him or her, or wardship is terminated;
- C. the child is no longer in need of early intervention services;
- D. the child reaches the age of three and is no longer eligible for early intervention services and is determined to not be eligible for services in the Part B system;
- E. the educational surrogate fails to fulfill their responsibilities as defined by state and federal regulations.

MEDIATION AND DUE PROCESS HEARING PROCEDURES FOR PARENTS AND CHILDREN (34 CFR 303.419 – 303.425)

The state system includes written procedures for the timely administrative resolution of individual child complaints by parents concerning any of the matters in 34 CFR 303.403 (a). The State meets this requirement by developing procedures that--

- 1. Meet the requirements in 34 CFR 303.419 and 34 CFR 303.421 through 303.425, and
- 2. Provide parents a means of filing a complaint.

Mediation is available to parents in the state of Missouri and the state has adopted the procedures listed below.

To initiate mediation:

Upon receipt of a request for due process hearing, the parents will be offered the opportunity to mediate their dispute. Mediation is voluntary and parties must agree to mediation. Mediation will be provided at no cost to either party. Mediation is not used to deny or delay a parent's right to a due process hearing under Section 303.420 or to deny or delay any other rights afforded under Part C of this Act.

The parties must mutually agree on a mediator from the trained mediator list maintained by the Department of Elementary and Secondary Education, Special Education Division.

- a) Mediation must be scheduled within fifteen days of the selection of a mediator.
- b) Mediation must be conducted at a time and place mutually agreed upon by the parties.
- c) Mediation must be completed within thirty days of the agreement to mediate.
- d) Any agreement reached during the mediation must be in writing and delivered to each party.
- e) No more than three persons can accompany each party unless the parties mutually agree on additional participants.
- f) No attorney shall participate or attend on behalf of any party at the mediation session. However, a lay advocate may accompany parents.
- g) Discussions held during a mediation session are confidential and cannot be used later as evidence in a due process hearing or civil action.

Mediator qualifications:

- a) Mediators must be impartial and free of any conflict of interest.
- b) Mediators shall not be employees of a public or private agency that is involved in the early intervention services for the child and/or family.
- c) Mediators must have knowledge of laws and regulations relating to the provision of appropriate early intervention service to children with disabilities.
- d) Mediators must have a minimum of 16 hours of training as a mediator.
- e) Mediators, to be placed on the Departments mediator list, must meet the above requirements and must agree to be compensated at a set rate.

Effect on Due Process Hearing timelines: the process for assigning a hearing officer and scheduling a due process hearing will occur simultaneously with the mediation process. In the event that the due process hearing is scheduled for a date prior to the date of the completion of the mediation, one or both of the parties may request, and obtain, an extension of the due process hearing time-line from the hearing officer if the desire is to proceed with the mediation.

DUE PROCESS HEARING PROCEDURES

To initiate a due process hearing, a written statement requesting a due process hearing and indicating the concerns must be submitted to the Compliance Section, Division of Special Education, Department of Elementary and Secondary Education. Within thirty (30) days of receipt of this statement, a hearing will be held to review the concerns. The hearing will be conducted by a hearing officer named by the Assistant Commissioner, Division of Special Education, on behalf of the State Board of Education.

APPOINTMENT OF AN IMPARTIAL PERSON (34 CFR 303.421)

An impartial person must be appointed as a hearing officer to implement the complaint resolution process in this Subpart. The person must have knowledge about the provisions of Part C, of complaint management requirements, and the needs of, and services available for eligible children and their families, and perform the following duties:

1. listen to the presentation of relevant view points about the complaint, examine all information relevant to the issues and seek to reach a timely resolution of the complaint, and
2. provide a record of the proceedings, including a written decision.

As used in this section, impartial means that the person appointed to implement the complaint resolution process:

1. is not an employee of any agency or other entity involved in the provision of early intervention services or care of the child or child's family, and
2. does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.

A person who otherwise qualifies under this section is not an employee of an agency solely because the person is paid by the agency to implement the complaint resolution process.

PARENT RIGHTS IN ADMINISTRATIVE PROCEEDINGS (34 CFR 303.422)

DESE ensures that the parents of children eligible under this part are afforded the rights in this section in any administrative proceedings carried out under 34 CFR 303.420 that include the following:

1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children eligible under this part;
2. Present evidence, and confront, cross-examine, and compel the attendance of witnesses;
3. Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five days before the proceeding;
4. Obtain a written or electronic verbatim transcription of the proceedings; and,
5. Obtain written findings of fact and decisions.

CONVENIENCE OF PROCEEDINGS; TIMELINES (34 CFR 303.423)

Any proceeding for implementing the complaint resolution process is carried out at a time and place that is reasonably convenient to the parents. DESE ensures that no later than 30 days after the receipt of a parent's complaint, the impartial proceeding required under this section is completed and a written decision mailed to each of the parties.

DESE, after deleting any personally identifying information will disclose the findings and decision to the State Interagency Coordinating Council established under 300.650, thus making the findings and decisions available to the public.

CIVIL ACTION (34 CFR 303.424)

Any party aggrieved by the findings and decision regarding an administrative complaint has the right to bring a civil action in State or Federal court.

STATUS OF A CHILD DURING PROCEEDINGS (34 CFR 303.425)

During the pendency of any proceeding involving a complaint under this section, unless the public agency and parents of a child otherwise agree, the child must continue to receive the appropriate early intervention services currently being provided.

If the complaint involves an application for initial services under this part, the child must receive those services that are not in dispute.

CONFIDENTIALITY OF INFORMATION (34 CFR 303.460)

It is the policy of the Missouri Department of Elementary and Secondary Education that all information collected and maintained by agencies responsible for the provision of early intervention services for children with disabilities will be protected to ensure the confidentiality of all such information consistent with the specific procedures established in this section.

These policies and procedures meet the requirements in 34 CFR 300.560 through 300.576.

CONFIDENTIALITY FROM IDEA-Part B (34 CFR 300.560-300.576)

DEFINITIONS (34 CFR 303.460)

Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

Education records means records maintained by a public agency responsible for the provision of early intervention services, which pertain to the early intervention services provided to a child with a disability. The term includes medical, psychological, and educational reports but does not include records of instructional, educational, ancillary, supervisory, and administrative personnel which are the sole possession of the maker and which are not accessible or revealed to any other

personnel, except another person who performs on a temporary basis the duties of the individual who made the record. The term includes test instruments or protocols/score sheets and a record of the test results only if they contain personally identifiable information. Copies of test protocols will only be provided if the failure to do so would effectively prevent the parent from exercising the right to inspect and revise the educational records. These records are defined as education records in FERPA.

Participating agency means any agency or institution, which collects, maintains, or uses personally identifiable information or from which information is obtained under this part. This includes the system point of entry (SPOE).

NOTICE TO PARENTS (34 CFR 300.561)

Notice to parents information is included in Section IV, Comprehensive Child Find System, of this plan.

ACCESS RIGHTS (34 CFR 300.562)

Each SPOE shall permit parents to inspect and review any early intervention records relating to their child that are collected, maintained, and used by the Part C System without unnecessary delay and before any meeting regarding an IFSP or hearing relating to the identification, evaluation, placement or provision of Early intervention services and, in no case, more than 45 days after the request has been made. The right to review and inspect records includes;

- A. the right to a response from the SPOE to reasonable requests for explanations and interpretations of the records;
- B. the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and,
- C. the right to have a representative of the parent inspect and review the records.

The SPOE may presume that the parent has authority to inspect and review records relating to his/her child unless the SPOE has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

RECORD OF ACCESS (34 CFR 300.563)

Each SPOE shall maintain a record of all parties obtaining access to Early intervention records collected, maintained or used under Part C of IDEA (except access by parents and authorized employees of the participating agency). The record will include:

- A. name(s) of party;
- B. the date access was given; and,
- C. purpose for which the party is authorized to use the records.

The record of access shall be maintained in each file of each child that contains confidential information. The SPOE is required to maintain a list of those employees who have access to Early intervention records and maintain the list in a central location. Only employees of the SPOE who have a legitimate need to access education records shall be included on the list.

RECORDS ON MORE THAN ONE CHILD (34 CFR 300.564)

If any Early intervention record includes information on more than one (1) child, the SPOE shall allow parents to inspect and review only the information relating to their child or to be informed of the specific information.

LIST OF TYPES AND LOCATIONS OF INFORMATION (34 CFR 300.565)

Each SPOE shall provide parents, on request, a list of the types and locations of education records collected, maintained, or used by the Part C system.

FEES (34 CFR 300.566)

Each SPOE may charge a fee for copies of records which are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. A SPOE may not charge a fee to search for or to retrieve information under this part.

AMENDMENT OF RECORD AT PARENT'S REQUEST (34 CFR 300.567 – 300.570)

A parent who believes that information in the Early intervention records collected, maintained or used under this part is inaccurate, misleading, or violates the privacy or other rights of the child may request the SPOE that maintains the information to amend the information.

The SPOE shall reach a decision regarding the request within a reasonable period of time, but no more than 45 calendar days after receipt of the request. If the SPOE agrees to the requested amendment, the records in question shall be amended as agreed to. If the SPOE denies the request for an amendment, the SPOE shall:

- A. inform the parent of the denial and advise the parent of their right to a hearing; and,
- B. advise the parent/guardian that they have a right to request a hearing, from DESE if they desire to further challenge the data contained within the child's file. This hearing shall be held by DESE in conformity with the requirements outlined in Section 99.22 of the Family Educational Rights and Privacy Act regulations.

If, as a result of the hearing, DESE decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, the SPOE shall amend the information accordingly and so inform the parent in writing.

If, as a result of the hearing, DESE decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, the SPOE shall inform the child's parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reason for disagreeing with the decisions of the SPOE. Any explanation placed in the records of the child must be maintained by the SPOE as a part of the child's records as long as the record or contested portion is maintained by the SPOE. IF the record of the child or the contested portion is disclosed by the SPOE to any party, the explanation must also be disclosed to the party.

CONSENT REGARDING PERSONALLY IDENTIFIABLE INFORMATION (34 CFR 300.571)

The SPOE shall require written consent from the parent before it discloses information from the early intervention records of a child unless it is authorized to do so under Part 99 of the regulations implementing the Family Educational Rights and Privacy Act of 1974.

Written consent from the parent shall be obtained before any personally identifiable information is:

- A. disclosed to anyone other than officials of participating agencies collecting or using such data; or,
- B. used for any purpose other than meeting any requirement under IDEA.

In the event parent consent cannot be obtained, due process hearing procedures may be invoked by the Part C System.

If parent's failure to give consent would constitute neglect as defined in the Child Abuse and Neglect Laws of Missouri, Section 210.110 RSMo, a report should be made by the SPOE to the proper authorities.

SAFEGUARDS (34 CFR 300.572)

Each SPOE shall protect the confidentiality of personally identifiable information at the collection, storage, disclosure, and destruction stages. To assure protection, the SPOE shall:

- A. appoint one (1) official at each SPOE to be responsible for ensuring the confidentiality of any personally identifiable information;
- B. provide training or information to all persons collecting or using personally identifiable information in the state's policies and procedures governing such information; and,
- C. maintain, for public inspection, a current list of the names and positions of those employees within the SPOE who may have access to personally identifiable data.

DESTRUCTION OF INFORMATION (34 CFR 300.573)

The SPOE shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide early intervention services to the child. The information must be destroyed at the request of the parent subject to the federal requirement that records be maintained for a minimum of three (3) years from the date the child no longer receives early intervention services. However, a permanent record containing the child's name, address, and phone number, may be retained without time limitation.

ENFORCEMENT (34 CFR 300.575)

The Department of Elementary and Secondary Education, through the process of monitoring, will assure that each SPOE receiving and/or eligible for funds from federal sources will have all such policies and procedures, as described herein, in effect. In the event a SPOE fails to comply with the provisions of this part, the Department of Elementary and Secondary Education may initiate actions to withhold the payment of State and Federal funds available to the SPOE under this part.